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Contact: Barry Massey, public information officer

bmassey@nmcourts.gov

505-470-3436

NM Supreme Court issues order against disclosure of immigration-related information of noncitizen crime victims

SANTA FE – The state Supreme Court today ordered that visa information of crime victims remain confidential and not be available to the men accused of the crimes and their defense attorneys for possible use in trials.

The Court issued an order reversing the evidentiary decisions of two district courts that required disclosure of T and U visa applications and related materials of crime victims and their parents for the defense of the men who allegedly committed the crimes. The visa-related information includes answers to questions about the applicant’s medical, immigration and criminal history along with a statement by the victims describing the alleged crimes.

The Court directed Second Judicial District Judge Cindy Leos and Eleventh Judicial District Judge Daylene Marsh to “compel the return or destruction” of visa materials previously provided in the cases and “to prohibit further production or use of any such related materials in future proceedings.” The judges also were directed to invalidate subpoenas issued last year to require disclosure of the visa information as part of the pretrial evidence-sharing process known as discovery.

The Court will issue written opinions later that explain the legal reasoning for its rulings. Absent the Court’s directives, the defense could have used the personal information in the visa materials in questioning the victims or their parents at trial to potentially challenge or discredit the credibility and truthfulness of their testimony.

The federal government established T and U visas to encourage noncitizen crime victims and survivors of human trafficking to report the crimes without fear of deportation and to help law enforcement investigate and prosecute the offenders. If granted, the visas provide a legal nonimmigrant status for people to remain temporarily in the U.S. and a pathway to securing a “green card” providing them lawful permanent resident status.

To qualify for a T visa, a person must be present in the United States as a result of being a victim of human trafficking. U visas are available for victims of certain crimes that occurred in the U.S., and include sexual assault and exploitation, murder, robbery, abduction and false imprisonment.

The court issued its order after holding an oral argument last week in two cases raising similar legal questions about a defendant's right to a fair trial, the privacy rights of crime victims and the confidentiality of visa-related information protected under federal law.

In one of the cases, a San Juan County man, David Paulino Padilla-Suazo, was charged with two counts of criminal sexual contact with a child under 13. The girl's noncitizen parents reported the alleged crimes to police after learning of the incidents and were advised by law enforcement about the U visa program.

In the other case, a Bernalillo County man, Alberto Villanueva Caprio, was charged with sex crimes, child abuse and bribery of a witness involving a girl he brought from Honduras where he allegedly started sexually abusing her at the age of 12. The alleged victim applied for a T visa.

Defense attorneys sought disclosure of the visa-related information and the district judges required disclosure after reviewing the materials to determine what should be made available. Proceedings in both cases were put on hold late last year by the Supreme Court while it considered challenges to the subpoenas that forced disclosure of the information. A mistrial was declared in the Bernalillo County case after the Supreme Court halted further proceedings.

The Court's latest order allows the criminal cases to proceed. Caprio, however, has filed a motion in his district court case to prohibit a retrial on grounds it would violate double jeopardy protections against being tried twice for the same offense. The Court's order granted requests by legal representatives of the crime victims and family members for writs of superintending control that compel the lower courts to follow the justices' directives concerning the visa-related information.

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[Click here](#) for the Supreme Court order and writs of superintending control. The consolidated cases are *Ramirez v. Marsh*, S-1-SC-39966, and *New Mexico Immigrant Law Center v. Leos*, S-1-SC-40114.